

HOUSE BILL NO. 129

INTRODUCED BY J. ANDERSEN

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROCEDURE FOR A LANDOWNER WITH PROPERTY ADJACENT TO SURFACE WATER THAT IS OPEN TO RECREATIONAL USE TO REQUEST AND BE GRANTED A PERMANENT OR SEASONAL NO-SHOOTING SAFETY ZONE DESIGNATION IN ORDER TO PROTECT THE LANDOWNER'S SAFETY AND PRIVATE PROPERTY; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES IMPLEMENTING THE SAFETY ZONE DESIGNATION PROCEDURE AND REQUIRING WRITTEN FINDINGS WHEN A REQUEST IS MADE; AMENDING SECTION 23-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-302, MCA, is amended to read:

"23-2-302. Recreational use permitted -- limitations -- exceptions. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other

objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities which are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water;

or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) the establishment of a procedure for a landowner with property adjacent to surface water that is open to recreational use to request and be granted a permanent or seasonal no-shooting safety zone designation along the property line bordering the surface water in order to protect the landowner's safety and private property;

~~(b)(c)~~ provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under ~~subsection~~ subsections (5)(a) and (5)(b); and

~~(c)(d)~~ a procedure for the identification of streams within class II waters ~~which that~~ are not capable of recreational use or are capable of limited recreational use; and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of ~~such~~ school trust lands."

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